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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/773,706

02/02/2001

Charles R. Brewer

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10/18/2004

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EXAMINER

VINCENT, DAVID ROBERT

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/773,706

**Applicant(s)**

BREWER, CHARLES R.

**Examiner**

David R Vincent

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,29,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,29,31 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

Claims 29 and 31 specify using two different paths. One for control data and one for main/high BW data. However, the applicant's specification clearly discloses that both the S&C primary path and the data secondary path use the same transceiver and antenna (pg. 44, lines 20-22). It is assumed that support for two paths is derived from using two different pieces of hardware (modems, e.g., a BPSK modem 78 and a QPSK modem 102, Fig. 4) to send the two different signals.

Claim 32 specifies sending information but does not say where to. Although this claim has not been rejected under USC 112, the applicant may still want to consider specifying where the sent data goes.

Furthermore, although the applicant specifies the term "real-time", the applicant does concede to the fact that satellite hops experience severe delays (1 ½ second hop, pg. 39, lines 21-26). One of ordinary skill would realize that more than ¼ second delay is generally not tolerable for real time voice transmissions. However, it is the applicant's right to use the term "real-time" since it is a very broad term.

#### ***Specification***

1. The abstract of the disclosure is objected to because it is not on one separate page. Since this application will be scanned

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into an IFW the applicant should submit an abstract on a separate piece of paper. Correction is required. See MPEP § 608.01(b).

### ***Double Patenting***

2. This is a double patenting rejection. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,208,626. Although the conflicting claims are not identical, they are not patentably distinct from each

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other because it would have been obvious to delete the last two steps of determining specified in the issued claim 1. The invention could be used for a method of synchronizing. Claim 1 of the issued patent is more narrow and has all the limitations specified in claim 1 of the pending application.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent. The changes made to 35 U.S.C. 102(e) by the American

Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 29, 31-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Garner (US 6,542,739 B1).

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Garner discloses a satellite communication system (Figs. 1, 17-22) providing real-time (e.g., col. 4, lines 18-26; col. 7, lines 29-34; col. 30 ; col. 42; col. 50) high BW data (not further defined reads on e.g., col. 6, lines 2-10; wideband data TX, col. 13, lines 31-39; col. 17, lines 24-67; 6750 bps, col. 23, lines 40-54; col. 26, lines 26-40; transmitting voice and data, col. 27, lines 63-67; 64kbps, col. 41, lines 38-45; col. 49, lines 64-67), a satellite (e.g., Figs. 1, 17), a central earth station (e.g., feederlink station, Figs. 1, 17 and respective disclosure, e.g., NCCTE, col. 5, lines 16-30), a remote station (remote vehicles, Figs. 1, 17; METs, col. 8, lines 44-60), predetermined time slots (complying with TDMA protocol, col. 15, lines 49-59; col. 16), in response to control information (e.g., registering with satellite, cols. 19-25, especially, col. 21, lines 20-34; col. 27, especially, col. 27, lines 10-19; col. 30, lines 45-55; col. 40, lines 34-43; col. 60, signaling using DPSK at 1687 bps, col. 74), transmitting control information on a first TX path (e.g., signaling using DPSK at 1687 bps, col. 74, lines 10-17), transmitting high BW data on a second TX path (e.g., transmitting data over the MET-C channel at 6.75 kbps using QPSK, col. 73, lines 55-67), paths different (using different hardware modulation and/or encoders amounts to different electrical paths), and using Internet (col. 9, lines 51-60), as specified in claims 29, and 31.

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***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garner, as set forth above, in view of Wesel (US 2003/0207684).

Although Garner discloses an Internetwork (col. 9), Garner fails to particularly call for sending data via the Internet in response to real time event, as specified in claim 32.

Wesel teaches sending data via the Internet in response to real time event (23, Fig. 1; Fig. 9; section 43), as specified in claim 32.

Since Wesel also teaches transmitting via satellites at high BW and using time slots (section 43), and Garner discloses using the PSTN (Fig. 18), private networks (Fig. 18) and an Internetwork (col. 9, lines 51-60), it would have been obvious to combine the two references by including Internet access in the WAN disclosed


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in Garner for the purpose of accessing real-time data from the Internet, such as weather, sports, or VoIP calls.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David R Vincent whose telephone number is 571 272 3080. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on 571 272 3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 10/16/04  
David R Vincent  
Primary Examiner  
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October 12, 2004